

## **Remarks**

Claims 1-25 currently stand rejected. Claims 14 and 21 are amended herein. Claim 15 is canceled herein; thus claims 1-14 and 16-25 remain pending. The Applicant respectfully traverses the rejection and requests allowance of claims 1-14 and 16-25.

### **Claim Rejections under 35 U.S.C. § 103**

Claims 1-5, 14-16, and 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cellular Service Report: Who Needs a Cell Phone?*, Consumer Reports, v.62, n.2, pp.10-15 (February 1997) (hereinafter “CSR”) in view of *Californians Find Strings Attached to Wireless Service*, San Jose Mercury News (January 5, 1999) (hereinafter “Californians”) and Miles, J.B., *Call Waiting*, Government Computer News, 19, 17, 27 (July 2000) (hereinafter “Miles”). (Page 2 of the Office action.)

Claims 6, 17, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over CSR, Californian, and Miles in view of Hoffman, Richard, *A World Without Wires*, Network Computing, n.1113, p.42 (2000) (hereinafter “Hoffman”). (Pages 8 and 9 of the Office action.)

Claims 7-13, 18-20, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over CSR, Californians, and Miles in view of U.S. Patent Application Publication No. 2002/0198929 to Jones et al. (hereinafter “Jones”). (Page 9 of the Office action.)

The Applicant respectfully traverses the rejections in light of the following discussion.

### ***Claim 1***

Independent system claim 1 is reproduced below, with emphasis supplied:

1. A system for utilizing a collective processing capability of a plurality of computers after the computers have been sold to purchasers by a vendor, the system comprising the steps of:

*entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein, with respect to a specific one of the computers to be sold to said one of the purchasers, the vendor retains a right to use said specific one after the sale thereof;*

conveying, subject to said agreements, the plurality of the computers to said purchasers;

interconnecting the computers via the Internet to create a network; and

using the network to provide a service that provides the vendor with a commercial benefit.

The Office action alleges that CSR and Californians teach the operation of entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein, with respect to a specific one of the computers to be sold to said one of the purchasers, *the vendor retains a right to use said specific one after the sale thereof*. (Pages 3 and 4 of the Office action.) More specifically, the Office indicates that CSR and Californians “teach that said subscriber’s phone would only work in the service provider network of the service provider that sold said phone to said subscriber ... and where said subscriber would be charged an early termination fee for canceling the contract or switching to another carrier.” (Page 3 of the Office action; emphasis supplied.) More specifically, the Office action alleges at pages 13 and 14 (emphasis supplied):

“[T]he contract signed between a service provider and phone subscriber gives said service provider the right to use said subscriber phone because when a service provider provides to a subscriber a phone at discount for signing a contract with said service provider, the owner of said phone, prior [to] the expiration of said contract, is the service provider and not the subscriber[,] for said subscriber to change carrier prior to the contract expiration date, said subscriber would have to purchase said phone from said service provider by paying an early termination fee. Said contract gives *said service provider the right to use said subscriber phone because said service provider is the only one that has the right to provide a signal and a[] network connection to said phone.*”

In other words, the Office action equates a vendor’s right to *use* a computer after the sale thereof, as set forth in claim 1, with a cellular service provider’s right to *provide a signal and a network connection to said phone*. The Applicant respectfully disagrees with this view of the references for at least two reasons. For one, providing a signal and a network connection to a phone sold to a subscriber is not the same as a vendor *using* a computer or similar device. Instead, the agreement cited in the Office action *allows the subscriber* to use the cellular service provider’s network and the supplied phone in exchange for a commitment from the user to pay the service provider a monthly fee for a predetermined period of time.

Secondly, providing a signal and a network connection to the phone is not a *right* of the

service provider at all, but an *obligation* of the provider for the benefit of the subscriber. Stated differently, as long as the subscriber pays the charges required under the agreement with the service provider, the service provider must provide the service for which the subscriber has contracted. As a result, the service provider's right under the agreement is to *receive payment* for the supplied service, not to *use* the phone. Further, the service provider is discharged of its obligation to provide service if the subscriber terminates the contract. In this case, as indicated in the Office action, the subscriber may also be required to pay a termination fee for any discounts the subscriber previously received in the purchase price of the phone or in the monthly fee, and not because the service provider is no longer able to provide the service to the subscriber. (See pages 13 and 14 of the Office action.)

Specifically in the case of CSR, while the sale of a phone at a discount price may be associated with the purchase of a service plan from a cellular service provider (identified in the Office action as the vendor of claim 1), CSR indicates that what the cellular service provider receives under the agreement with the purchaser is a commitment to pay for the use of the provider's service at a specified cost structure for a predetermined period of time. (See paragraphs 15 and 16 of CSR.) In exchange for that payment, the subscriber is allowed to use the provider's service. CSR does not indicate that the cellular service provider retains any other rights under the agreement or contract, much less *a right to use the cell phone* after the sale of the phone to the subscriber. Only the *subscriber*, or another individual authorized thereby, uses the cell phone and, by extension, the cellular network provided by the cellular service provider.

The Office action further cites Californians as anticipating this provision of claim 1. (Page 3 of the Office action.) Since Californians also describes similar commitments for a predetermined period of time, including early termination fees, in exchange for receiving service, the arguments presented above also apply to this reference.

Thus, based on the foregoing discussion, the Applicant respectfully asserts that claim 1 is allowable in view of CSR, Californians, and Miles, and such indication is respectfully requested.

#### *Claims 14 and 21*

Claims 14 and 21 both include a provision similar to that of claim 1 of entering into an agreement by a vendor and a purchaser, wherein the vendor retains a right to use the conveyed device after the conveyance. Further, the Office action employs the same rationale as discussed

above in rejecting claim 1. (Pages 5-8 of the Office action.) Thus, based on the reasons presented above, the Applicant respectfully contends that claims 14 and 21 are allowable for at least these same reasons.

Claims 14 and 21, as amended, further provide for repeating entering into an agreement and conveying a computer or device until a predetermined minimum number of computers or devices *for creating a network* have been sold, and interconnecting the devices via the Internet to create the network. Support for the amendment is provided at least at paragraph [0020] of the present application.

The Office action employs Official Notice to show “that vendors try to sell their stock inventories in order to generate a profit.” (Page 14 of the Office action.) However, such Official Notice does not teach or suggest selling the devices until a predetermined minimum number of devices *for creating a network* have been sold, as set forth in claims 14 and 21. Instead, under the Official Notice taken, sales are driven by the amount of stock left in inventory, and such sales have no connection to how many units are deemed necessary for a network. Thus, the Applicant contends that claims 14 and 21 are allowable for at least this additional reason, and such indication is respectfully requested.

#### *Claims 2-13, 16-20, and 22-25*

Claims 2-13 depend from independent claim 1, claims 16-20 depend from independent claim 14, and claims 22-25 depend from independent claim 21, thus incorporating the provisions of their respective independent claims. Therefore, the Applicant contends that claims 2-13, 16-20, and 22-25 are allowable for at least the reasons presented above in support of claims 1, 14, and 21, and such indication is respectfully requested.

#### *Claim 15*

Claim 15 is canceled herein; thus, the rejections as they pertain to claim 15 are obviated as a result.

Therefore, in view of the above discussion, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103 rejections of claims 1-25.

### **Conclusion**

Based on the above remarks, the Applicant submits that claims 1-14 and 16-25 are allowable. Other reasons in favor of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant thus respectfully requests allowance of claims 1-14 and 16-25.

The Applicant believes no fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 08-2025 accordingly.

Respectfully submitted,

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/Kyle J. Way/

**SIGNATURE OF PRACTITIONER**

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